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UNCLAS SECTION 01 OF 02 SHANGHAI 000330

SENSITIVE
SIPDIS

USTR FOR CHINA OFFICE - TSTRATFORD, AWINTER, TWINELAND, DKATZ;
IPR OFFICE - RBAE; AND OCG - TPOSNER
DOC FOR NATIONAL COORDINATOR FOR IPR ENFORCEMENT - WPAUGH
DOC FOR ITA/MAC: SZYMANSKI, YOUNG
LOC/ COPYRIGHT OFFICE - STEPP
USPTO FOR INT'L AFFAIRS - LBOLAND
DOJ FOR CCIPS - TNEWBY
FBI FOR LBRYANT
DHS/ICE FOR IPR CENTER - DFAULCONER
DHS/CBP FOR IPR RIGHTS BRANCH - GMACRAY
TREASURY FOR OASIA - DOHNER/CUSHMAN
NSC FOR KURT TONG

E.O. 12958: N/A

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SUBJECT: SHANGHAI IP ADMINISTRATIVE OFFICES MOVE FORWARD

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¶1. (SBU) Summary: During an August 8 farewell visit to Shanghai, Senior IPR Attaché Mark Cohen engaged Shanghai IP Administration (SIPA), Shanghai IPR Complaint Center, and Shanghai Administration of Industry and Commerce (SAIC) officials on current initiatives and opportunities for cooperation. SIPA Director General Chen Zhixing said USTR's 2008 Special 301 Report on Shanghai is "impartial and objective." He also welcomed comments from the USG on how Shanghai should implement the Outline of the National IP Strategy. The Shanghai IP Complaint Center emphasized that foreigners are increasingly making use of the complaint center as they are becoming familiar with its services. SAIC Deputy Director said that as a result of efforts on landlord liability, over 100 tenants have been evicted from markets around Shanghai. However, foreigners frequenting counterfeit markets continue to be a problem. End Summary.

SIPA Welcomes 301 Language and Further Cooperation

¶2. (SBU) DG Chen relayed his appreciation for Cohen's support of Shanghai and welcomed further collaboration with the U.S. Mission in China. Regarding the 2007 Special 301 Report on China, Chen welcomed the report's language about Shanghai, saying it is "impartial and objective." He noted his appreciation for recognizing Shanghai as "a relatively bright spot in China's IPR protection environment" and for pointing out Shanghai's accomplishments in the judicial arena. Chen also acknowledged that the report's criticism of Shanghai retail counterfeit markets is an "accurate assessment of the situation."

¶3. (SBU) According to Chen, Shanghai is striving to implement the National IP Strategy that was released in early June. Soon after its release, the Shanghai IP Administration established a website welcoming public comment on the city's implementation of the strategy. According to Chen, Shanghai is the first city in China to welcome such public comment. Although the deadline of July 25 had passed to submit comments, Chen agreed to still accept comments from the U.S. Mission. In addition to

implementing the strategy, Shanghai continues to focus on counterfeit markets, Internet-related infringement, and trade fairs.

Complaint Center - Trademarks are Biggest Issue

14. (SBU) During a meeting at Shanghai's IPR Complaint Center, Director Yang Hui briefed Cohen on the division of the office: the Shanghai Service Center for IP Protection and the Shanghai Consumer Complaint and Report Center. The former deals strictly with IPR-related complaints and the latter handles complaints of poor quality products and services. Although the Consumer Complaint Center was established several years prior to the IPR Protection Center, Shanghai decided to combine the two components to help with information sharing. Yang noted that Shanghai was one of the first cities in China to establish an IPR Complaint Center in July 2006 and has since added 7 district level IPR complaint centers, mostly located in high-tech industrial parks.

15. (SBU) Since its establishment, the Center has fielded 3,273 complaints and inquiries. Of these, the Center has opened and referred 151 IPR cases. The cases included 71 trademark cases, 66 copyright cases, 13 patent cases, and 1 case related to the Olympics. Domestic Chinese companies had initiated 136 of the cases, U.S. companies - 10 cases, and European companies - 5 cases. Yang added that complaints from foreign rights holders are increasing as foreigners become more familiar with the Center. The U.S. Motion Picture Association had also filed several cases at the Shanghai Complaint Center upon Cohen's suggestion, a development similar to what MPAA had done in Beijing where a large percentage of foreign related cases originate from MPAA. Note: The IPR complaint center was co-located with the consumer complaint center run by SAIC. The consumer complaint centers generally are more deeply staffed and

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receive more complaints than the IPR complaint centers. The IPR complaint centers and consumer complaint centers also can refer cases to each other. End note.

Counterfeit Markets and Landlord Liability

16. (SBU) At the Shanghai Administration of Industry and Commerce (AIC), Deputy Director Chen Xuejun outlined Shanghai's efforts to fight retail counterfeit markets and encouraged U.S. right holders to be more proactive in working with AIC to protect their rights. Shanghai recently began using landlord liability as a means to crack down on offending vendors. AIC encourages market owners to sign contracts with tenants and provides landlords with sample contracts that can be followed. According to Chen, if a tenant continues selling counterfeits after the second warning, the owner should evict the tenant from the market. (Comment: The problem with the initiative is that it is non-compulsory in nature. End comment.) Within the past year, over 100 tenants have been evicted under this new guideline. (Note: One U.S. company already notified the Consulate that it plans to file a law suit against a Shanghai market owner under the new landlord liability provisions. End note.)

17. (SBU) Chen expressed that part of Shanghai's counterfeit market problem is due to the propensity of foreigners to buy fakes. As an example, he noted a media report about singer, Celine Dion buying fake goods in Shanghai. He added that NBA basketball players also visited counterfeit markets during their stay in the city. (Comment: Blaming foreigners for counterfeit market demand is a common refrain among Shanghai IP officials. However, Shanghai's counterfeit markets are equally full of local shoppers.)

18. (SBU) Comment: In many respects, Shanghai's determination to protect IP is admirable. The courts are some of the top IP case litigation venues in the country and have a relatively high

percentage of foreign related cases as well as cases involving Chinese litigants from outside of Shanghai; Shanghai Customs is an active proponent of IP protection; and the city's administrative offices actively reach out to partner with the Chinese and foreign business communities. Shanghai has been attracting a foreign R&D community, particularly in the biotech sector. Yet, the purveyors of infringing goods, both on the streets and with small retail establishments, remain largely unchecked. Although Shanghai and the Central Government have touted the closure of the city's premier counterfeit market, Xiangyang, for over two years, they have allowed several other markets to spring up and thrive in its place. In this case, inaction speaks louder than words.

¶9. (U) This cable was cleared by Mark Cohen.
JARRETT